IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT:

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

WRIT PETITION No.762 of 1993

Between:

1 Bata India Ltd., Rep by Mr. S.N. Ghoshal,
30, Shakespeer Sarani, Calcutta-17.

2 The Branch Manager,
Bata Shoe Store D.No.4-60/3-4,
Grampanchayat, Dilsukhnagar, Hyderabad-36

..... PETITIONER(S)

AND

1 The State of A.P., Rep by Secretary,
Department of Legal Metrology (Dept. of Wt. & Measures) Hyderabad.

2 The Controller of Weights & Measures,
Government of A.P., Department of Legal Metrology,
Musheerabad, Hyderabad.

3 The Inspector, Legal Metrology (W&M) R.R.(East)
6-1-103/24, Padma Rao, Nagar, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to;

i. to call for records from 3rd Respondent;

ii. to issue a writ of certiorari or any other writ or order as deemed fit for quashing seizure, seizure report/ Panchanama and the show cause notice No.265/PC/92-93, dated 26-10-92 (Annexure-I) issued by R-3;

iii. to issue a writ of Mandamus or any other writ or order directing the respondents to forebear and refrain from proceeding in any manner against the petitioners under the Standards of Weights and Measures Act, 1976, and the Stands of (*Sic*. Standards of) Weights & Measures (Packaged Commodities) Rules 1977;

iv. to issue a writ or order in the nature of prohibition and restraining the respondents from proceedings in any manner against the 1st petitioner company under the said Act and the Rules mentioned above, in so far as the sale of new white Cleaner in containers which are not sealed and whose cap is removable and the contents can be replaced.

Counsel for the Petitioners: MR.M.GUNNESWARA RAO

Counsel for the Respondents: GP FOR INDUSTRIES & COMMERCE

The Court made the following:

ORDER:

The petitioners in this writ petition challenges the show cause notice, dated 26-10-1992, issued by the 3rd respondent requiring the petitioners to explain as to why appropriate action should not be taken and a case should not be filed against the petitioners in Court of law as per the Rules. The allegation against the petitioners is that the petitioners contravened Section 39 read with Rule 2(r) and 6(1) (e) of the Standards of Weights and Measurements Act, 1976, and the Standards of Weights and Measurements (Packaged Commodities) Rules, 1977, respectively. The petitioners alleged to have displayed for sale of the packets of 'New White Cleaner Shoe Polish (canvas)' with marking of maximum retail price at Rs.11/- inclusive of all taxes without containing the required statutory declarations.

The petitioners filed this writ petition *inter alia* challenging the jurisdiction of the 3rd respondent in issuing the show-cause notice. According to the petitioners, the Standards of Weights & Measures (Packaged Commodities) Rules, 1977, have no application whatsoever in respect of the product that was displayed for sale. This Court having admitted the writ petition on 29-01-1993, kept the impugned show cause notice under suspension. The suspension was in operation for a period of more than 12 years. No counter-affidavit has been filed and thus the allegations made in the writ petition remain
un-rebutted.

The whole subject matter is become stale and it would not be proper to permit the respondents to proceed against the petitioners pursuant to the show cause notice

after a period of more than 12 years. On this ground alone, the show cause notice is liable to be set aside, but without expressing any opinion as to the applicability of the provisions of the Act and the Rules in respect of the product in question.

It shall be open to the respondents, if they so intend, to issue fresh show cause notice, requiring the petitioners to give explanation, in which event, they shall be at liberty to avail such remedies as may be available to them in law.

Accordingly, the writ petition is disposed of. No order as to costs.

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(B. SUDERSHAN REDDY, J.)

Date: 7-10-2004

ES/PV

To

1 The Secretary, State of A.P., Department of Legal Metrology (Dept. of Wt. & Measures), Hyderabad.
2 The Controller, Weights & Measures, Government of A.P., Department of Legal Matrology, Musheeabad, Hyderabad.
3 The Inspector, Legal Metrology (W&M) R.R.(East)

6-1-103/24, Padma Rao, Nagar, Secunderabad

4. Two C.Cs. to Government Pleader for Industries & Commerce, High Court Buildings, Hyderabad (O.U.T.).

5. Two C.D. copies